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Human Rights Council
Thirty-first session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the World Muslim Congress, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 January 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.16-02158(E)

Please recycle

Enforced Disappearance in Indian Occupied Jammu and Kashmir

Enforced disappearance is defined, in short, as the abduction or deprivation of liberty of a person by state authorities, followed by the denial of those authorities to disclose the whereabouts or fate of the person.

The convention puts an obligation on states to bring enforced disappearance offenders to justice. The convention provides for a number of procedural safeguards so that people don't go missing: people deprived of liberty have to be kept in an official place, to be registered, to have all their movements registered. Most importantly everyone deprived of liberty must be allowed contact with the outside world, especially to communicate with their family and counsel, and the family and counsel have a right to information on the detention and whereabouts of the person.

The convention recognizes that the victims of enforced disappearances are not only the disappeared themselves but also their relatives. It acknowledges the right of the families to know the fate of their relatives, and also recognizes that victims of enforced disappearance have a right to reparation for the wrong that was done to them.

The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.

Though, the Enforced Disappearance is a global phenomenon but mostly it exists in the under developed countries. The phenomena of enforced disappearances emerged in Indian occupied Jammu Kashmir soon after the 1989 when there was renewed uprising against Indian suppression and for the demand of right to self determination. The heavy military deployment, over seven hundred thousand, which makes Indian, held Kashmir world's heavily militarized zone. Among many other crimes committed against humanity in disputed territory, the Indian army is also accused of subjecting 8000 to 10,000 enforced and involuntary disappearances since 1989. India signatory to International convention on enforces disappearances has been able to side-step international human rights conventions through a series of laws that grant special powers to the armed forces in Indian held Jammu Kashmir.

The Indian government has empowered its military through special security legislations like the Armed Forces Special Powers Act (AFSPA) and the Public Safety Act (PSA), granting them sweeping impunity for acts carried out under these laws, which in turn facilitate the bringing about of enforced disappearances and other human rights abuses.

AFSPA for instance grants the 'powers' to members of the armed forces in 'disturbed areas' like Kashmir to shoot to kill or arrest persons on the ground of 'mere' suspicion. That is not only in contravention to core human rights standards, which guarantee a fair trial, but also goes against the basic principle of Indian criminal law itself: 'One is presumed innocent unless proven otherwise'. Likewise, the PSA provides for holding the arrested person in custody without trial for up to two years, dumping fair and speedy trial guarantees.

In Kashmir, many of those arrested under AFSPA or PSA never make it out of detention centers. They are held under 'incommunicado' detention (unacknowledged and secret detention) leading to enforced disappearance, tortured or subject to extra-judicial killings.

United Nations Special Rapporteur on extra-judicial killings and summary execution, Special Rapporteur on the situation of human rights defenders, Human Rights Watch, Amnesty International and other local and international human rights watchdogs identified the Armed Forces Special Powers Act (AFSPA) as a fundamental problem in the continuing lack of justice served in the country. The act, which was applied in Indian occupied Kashmir from 1990, stipulates that army receive legal immunity for their actions – no prosecution, law suits or other legal proceedings can be initiated against them. Perpetrators responsible for the disappearances of individuals, who then often end up executed or tortured and in mass graves, can hide behind the act, allowing them to live freely despite their crimes. Coupled with the lack of any investigation by the Indian Government the AFSPA is allowing murder, torture, and disappearance on a large scale throughout Indian held Kashmir. The government of Jammu and Kashmir has confirmed that a total of 3,744 persons have gone missing since 1990, but this figure is said to be a gross underestimate by the Association of Parents of Displaced Persons (APDP.

In 2009 international peoples tribunal for human rights Jammu Kashmir and Association of Parents of disappeared persons release a report, "Buried evidence" . This report documents 2,700 unknown, unmarked, and mass graves, containing 2,943+ bodies, across 55 villages in Bandipora, Baramulla, and Kupwara districts of Kashmir, based on applied research conducted between November 2006-November 2009.

In 2011 state human rights commission of Indian Held Kashmir conducted an investigation which not only vindicated the report of the IPTK 0f 2009 but against the earlier claims of the Jammu Kashmir police and Army that those buried in these unmarked mass graves are foreign militants, has stated that 574 bodies have been identified as locals following their burial. This indicts the government's negligence in identifying unclaimed bodies. Based on the above, the SHRC report evidences that there is every possibility that the 2156 unmarked graves hold the bodies of persons that were involuntarily disappeared. The cases of the 574 bodies also intimate that numerous persons have been killed in fake encounters and secretly buried in unmarked graves to conceal their identity. IPTK's 2009 report too had documented a list of 49 bodies, all designated by the state as "foreign militants," 47 of whom, on investigation, proved to have been killed in fake encounters, and none were identified as foreign insurgents.

Enforced disappearances impact on the enjoyment of a number of rights by both the disappeared person and her or his family; these include the right to health, the right to education, the right to take part in cultural life, the right to social security, the right to property, the right to family life and the right to housing .These violations appear even more evidently when the person who is forcibly disappeared is the "breadwinner". The majority of those subject to enforced disappearances are men, often the primary or sole source of income in the family. Many of these men leave behind wives and families when they disappear; these family members are often socially stigmatized and, in particular, women whose husbands have disappeared often are ostracized in the community because their husbands are falsely accused of crimes, or because people fear associating with someone who has been the target of an enforced disappearance.

The situation is not different in Indian Held Kashmir. Over 2500 women whose husbands have disappeared but have not yet been declared deceased are in a precarious and dangerous position. The men who have disappeared but are not declared dead have left thousands of women to assume the title of half widow, half wife. These women and children are in precarious with no legal protection, rendering many desperate and homeless and paving the way for abuse and exploitation.

The International Peoples' Tribunal on Human Rights and Justice (IPTK) and the Association of Parents of Disappeared Persons (APDP), constituents of Indian Occupied Jammu and Kashmir based Jammu Kashmir Coalition of Civil Society (JKCCS), have released a report on 9 September 2015 about human rights violations committed by Indian security forces in Indian Occupied Jammu and Kashmir. "Structures of violence; The Indian state in Jammu and Kashmir." Earlier in 2012 IPTK and APDP released a report Alleged Perpetrators which identified 500 alleged perpetrators responsible for 214 cases of human rights violations in IOK. In 2009 IPTK/APDP report Buried Evidence investigated the phenomenon of unmarked and mass graves in North Kashmir in IOK.

Prepared over the period of two years, the report holds Indian security forces for the **disappearance of 8000+ persons**, 70,000+ deaths, 6000+ unknown, unmarked and mass graves, and countless cases of torture and sexual violence in Indian Occupied Jammu and Kashmir. Overall the report documents the extra-judicial killings of 1080 persons and enforced disappearances of 172 persons and numerous cases of torture and sexual violence. The report, while illustrating the patterns of violence through individual case studies, is directly concerned with identifying the structure, forms and tactics of violence of the Indian State in IOK.

While pointing out the culture of impunity in IOK the report observes that 'the institutions and procedures of rule of law in Jammu and Kashmir (IOK) have been subverted to function within the larger culture of institutionalized impunity and violence'. The report calls the cases documented in it as 'crimes of Genocide, Crimes against Humanity and War Crimes under international law'

The Indian government's refusal to officially recognize enforced disappearances has left families in perpetual limbo, promulgating stress and psychological trauma for parents, spouses and children. World Muslim congress calls upon India;

To ratify International convention against enforced and involuntary disappearances

Accept the request of working group for the country visit, which is pending for a long time.
Repeal all legislations which facilitate human rights violation and provide impunity to perpetrators, including Armed Forces Special Powers Act
This organization also calls an international investigation to the issue of Unmarked Mass graves and DNA profiling of the remains of the buried.

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Human Rights Council
Thirty-first session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 January 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Please recycle

Clipping the Wings of Children under Occupation

Children are often the first victims during armed conflicts due to their vulnerability. In the last 15 years, it is estimated that two-million children have lost their lives in such conflicts[1]. Armed conflicts inevitably result in children directly or indirectly becoming victims, or children being enrolled as child soldiers. Children in the Occupied Palestinian Territories (OPT) do not escape from this plight as they face harsh living conditions due to the occupation's grave violations of their human rights.

The chronic tension, wide-spread ill-treatment, and long list of atrocities against these "first victims of the Israeli occupation of Palestine,"[2] are well-documented in a number of reports. Their situation is crucial as they represent more than half of the population of 1.8 million people in Gaza alone[3]. The 2015 Report of the Special Rapporteur on the situation of human rights in the Palestinian territories-occupied since 1967 highlights consequences of the bombing on Gaza during August-2014 uprising where 551 children were killed due to the unexpected missile strikes on civilian homes at night[4]. However, the situation of Palestinian children is critical even during times when no military action takes place. Palestinians represent "the world's largest refugee population"[5] as they have been forced out of their homeland, and an increasing percentage is living in extreme or subsistence poverty. Their fragile institutions cannot guarantee access to education or health services.

The presence of Israeli forces in the OPT creates a feeling of insecurity and a perception of threat in children's lives[6]. It is well identifiable in children's drawings containing images of planes dropping missiles on them[7]. Palestinian children live in such constant fear with dire impact on their mental state.

Exposure to traumatic events such as wars can result in "mental, behavioral and emotional problems in children and adolescents"[8]. It has been estimated that post-traumatic-stress-disorder (PTSD) was experienced by 23-70% of Palestinian children, as well as other emotional-disorders by as many as 47% of them, including depression. PTSD in Israeli children is lower, estimated according to the study between 5-8% due to the capacity Israel has to maintain "a routine and normal lifestyle." Therefore, it is important to acknowledge the particular horrific situations and lack of stability Palestinian children face. In the short-and-long-run, the devastating impact of life under occupation for the suffering Palestinian children can no longer be ignored.

UNICEF conducted in 2013 an in-depth investigation of "*Palestinian Children in Israeli Military detention: Observations and recommendations*"[9] in order to determine if they are in conformity with the Convention-on-the-Rights-of-the-Child (CRC) and Convention-against-Torture-and-Other-Cruel-Inhuman-or-Degrading-Treatment-or-Punishment (CAT). Reports were also conducted by the Committee-on-the-Rights-of-the-Child and human rights

[1] Olivia Garreau, « Children in War », at www.humanium.org/en/children-in-war

[2] See Nadezhda Kevorkova, 2014 at http://rt.com/op-edge/167812-israel-palestine-conflict children/

[3] Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Makarim Wibisono, A/HRC/28/78, 22 January 2015, p4

[4] Ibid n.3, p7

[5] UNICEF, "The Situation of Palestinian Children in The Occupied Palestinian Territory, Jordan, Syria and Lebanon" 2010, p1, at http://www.unicef.org/oPt/PALESTINIAN_SITAN-final.pdf,

[6] Harel-Fisch, Yossi; Radwan, Qasrowi; Walsh, Sophie D.; Laufer, Avital; Amitai, Gabriel; Fogel-Grinvald, Haya; Abdeen, Ziad "Psychological outcomes related to subjective threat from armed conflict events: findings from the Israeli-Palestinian cross-cultural HBSC study" . *Child Abuse & Neglect.* Sep2010, Vol. 34 Issue 9

[7] Muneera Al-Khalifa "Human rights in the middle east: the rights of women and children", Refugee Survey Quarterly, (2007) 26 (4)

[8] Dimitri L., "A systematic review on the mental health of children and adolescents in areas of armed conflict in the Middle East", Child: Care, Health & Development. Mar2012, Vol. 38 Issue 2011

[9] Palestinian Children in Israeli Military Detention: UNICEF Observations and Recommendations, 2013

organizations denouncing the cruel situations Palestinian children were enduring. Their conclusions reveal that ill-treatment of Palestinian children is "widespread, systematic and institutionalized"[10] through the whole process from the arrest of the child, to the child's prosecution and sentencing, thereby constituting clear violations of the most important rules of International Law and of these children's rights.

Israeli police, security agencies and prison services are directly involved. It is ridiculous for Israel to deny responsibility on the basis of its argument that these abuses by certain officials have not been orchestrated by the State. According to UNICEF, approximately 700 Palestinian children aged 12-to-17 are arrested on a yearly basis, interrogated and detained by the Israeli military detention system[11].

The arrest is a first insight into the violence involved in the process, as children are usually arrested at midnight by the Israeli armed soldiers, often not telling the parents or the child himself where he is being taken, why or for how long. UNICEF reports on the use of torture or other atrocious measures to force a confession during the interrogation process; children are neither aware of their procedural rights nor accompanied by a lawyer. The interrogation is characterized by a total absence of an independent observer which leads to the worst abuses possible[12]. The recourse to physical violence, intimidation and threats is frequent and leads to the result anticipated by the Israeli authorities: most children are coerced into involuntarily confessing to whatever false accusations forced upon them at the end of the interrogation. Violations of children's rights continue throughout the judicial process as children do not have the opportunity to meet with their lawyers before they are brought to court[13]. Judicial procedures in Hebrew are unavailable in Arabic and bail is often denied. The principal evidence brought to trial against Palestinian children is the confession coerced out of that child himself by abusive treatment[14].

The most common crime Palestinian children were charged with under Israeli Military Law was stone-throwing[15]. Children are sent to prisons located inside Israel isolating them from their family and causing severe emotional distress, which contravenes article-37 of the CRC, that detention of a child shall be used only "as a measure of last resort and for the shortest appropriate period of time"[16].

Torture is a norm of *jus cogens* in International Law[17]: its prohibition is universal and absolute, forbidden by the CRC to which Israel is a party and by the International-Covenant-on-Civil-and-Political-Rights (ICCPR) in its article-7 and 9 which concerns detention conditions. Obtaining evidence under torture is forbidden by article-15 of the (CAT) and the recourse to "sleep deprivation, solitary confinement, denial of food and water for up to 12-hours, denial of access to toilets, denial of access to a shower or change of clothes for days or weeks, exposure to extreme cold or heat, position abuse, yelling and exposure to loud noises, insults and cursing" are examples of cruel treatments used in the process[18]. The excessive use of hand ties is another issue even though the Israeli Military Advocate General (MAG) argued that its use had been introduced to prevent pain and injury. Israel's security concerns cannot justify the ill-treatment and cruelty Palestinian children have to endure. Israel has to treat Palestinian children as human beings and not as terrorists: Israel's paranoia cannot avenge itself against these children who are being used to intimidate and spread fear among Palestinians.

As a result of its occupation and military operations, Israel has violated these children's basic rights including the right to life and health when it bombed hospitals[19], their right to education when schools used as shelters were targeted by

[10] Ibid n.9, p1
[11] Ibid n.9, p9
[12] Ibid n.9, 11
[13] Ibid n.9, p12
[14] Ibid n9, p13
[15] Ibid n.5, p25
[16] Ibid n.9, p13
[17] ICJ, "Arrest Warrant of 11 April 2000" (Republic of the Congo v.Belgium), Judgment, Reports 2002
[18] Ibid n.5, p24
[19] Ibis n.3, p9

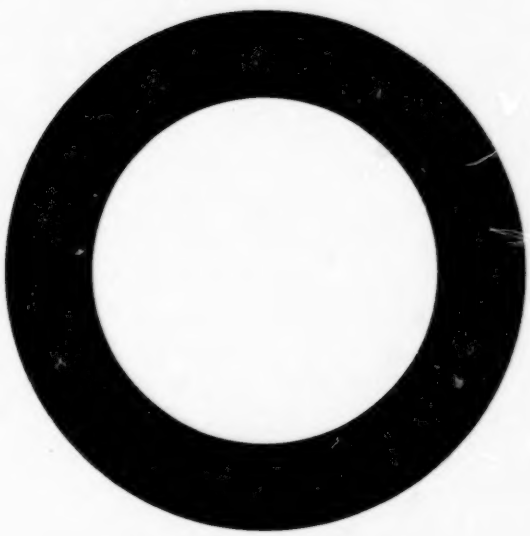
Israeli strikes[20], their right to liberty and security, and/or right to lawful arrest and legal counsel when detained, as reported by UNICEF. Israel should abide by article-44 of the CRC which clearly states that a State party should provide the Committee-on-the-Rights-of-the-Child with reports on its implementation of the CRC. In such reports, Israel has never acknowledged Palestinian children. In the Committee's own words, this omission "greatly affects the adequacy of the reporting process and the State's accountability for the implementation of the Convention[21]. This deliberate attitude shows the unwillingness of Israel to change its behavior and to act in conformity with its international obligations.

When stone-throwing Palestinian children are jailed, abused, traumatized, tortured, forced to stay in isolation in their cells, day and night, deprived of their inalienable rights to live as children live everywhere in this world, why is the UN Human Rights Council more divided than united in calling for their protection from Israel's ongoing assaults! The international community has yet to fulfill its responsibilities, since the partition plan created in 1947, to guarantee a more stable and secure future for generations of struggling Palestinian children to enjoy the rights and privileges, which Israeli children and others the world over, claim for themselves!

Céline Fontaine
EAFORD

[20] Ibid n.3, p10

[21] Concluding observations on the second to fourth periodic reports of Israel, adopted by the Committee at its sixty-third session (27 May – 14 June 2013), CRC/C/ISR/CO/2-4, p1



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Human Rights Council
Thirty-first session
Agenda item 9
Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action

Written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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Please recycle

Fighting Racial Discrimination through the Fulfillment of Political, Economic, Social, and Cultural Rights

Ever since the dawn of the United-Nations (UN) in 1945, the principle of "equal rights" has become one of the most important rights within the international human rights system, as the system *per se* is inherently based on the notion that all human beings are endowed with the same set of fundamental rights. This notion is beautifully summarized by Article-1 of the Universal-Declaration-of-Human-Rights, which declares that "all human beings are born free and equal in dignity and rights".[1] As a result, the principle of equality and non-discrimination has been enshrined in various international instruments, notably Article-1(2) and 55(c) of the UN-Charter and Article-2 and 26 of the ICCPR.[2] However, even though the rights of equality and non-discrimination are protected under international human rights law, many people around the world are still haunted by the nightmare of racism and racial discrimination. As reported by UN-Committee-on-the-Elimination-of-Racial-Discrimination (CERD) in General-Recommendation-Number-35, "the prevalence of racist hate speech in all regions of the world continues to represent a significant contemporary challenge for human rights".[3] For instance, CERD in General-Recommendation-Number-34 noted that "millions of people of African descent are living in societies in which racial discrimination places them in the lowest positions in social hierarchies".[4] Reports by independent civil societies also indicate that many people are still subjected to discrimination based on their racial or ethnic background, such as the Rohingya people in Myanmar who "have over the years been progressively marginalized from social and political life".[5] This is also the case for the Dalits in India, the Roma people in Europe, the Al-Akhdam in Yemen, or the Mbuti people in Congo, to mention few. These examples demonstrate that despite the obligations imposed by international human rights conventions, racism and racial discrimination persist, and in extreme cases the state is even actively involved in it.

Racism in itself is deplorable and contrary to the fundamental rights of human beings who are born free and equal. The question now is how the present system can be maximized in order to eliminate racism. In this regard, the Special-Rapporteur-on-contemporary-forms-of-racism, racial-discrimination, xenophobia, and-related-intolerance, Mutuma Ruteere, stated in his report that there is a "need for a comprehensive approach to preventing racism, racial discrimination, xenophobia, and related intolerance; possible preventive measures and policies; (…) and further tools to be considered in the prevention of racism and racial discrimination".[6] With respect to preventive measures, he identified, *inter alia*, the measures of "ensuring the participation of discriminated and marginalized groups in public and political life" and "promoting equality of opportunity in social and economic areas and eradicating poverty.[7] Moreover, paragraph-108-of-DDPA also stressed that "those measures for effective action, including social measures, should aim at correcting the conditions that impair the enjoyment of rights and the introduction of special measures to encourage equal participation of all racial and cultural, linguistic and religious groups in all sectors of society and to bring all onto an equal footing".[8]

This is imperative, since marginalization and exclusion in the political, economic, social, or cultural sectors seem to breed racial discrimination and *vice versa*. As stated by Mr. Ruteere, "the invisibility of poor and excluded ethnic groups in public life contributes to their vulnerability to violations and reinforces prejudices and the structures of discrimination."[9] Moreover, he also observed that there seems to be "a strong correlation between socio-economic

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[1] Universal-Declaration-of-Human-Rights-(adopted-10-December-1948-UNGA-Res217-A(III)-(UDHR)art-1.

[2] Daniel Moeckli, 'Equality and Non-discrimination' in Daniel Moeckli et al. (eds), *International Human Rights Law* (OUP 2010)-193.

[3] UNCERD, 'General-Recommendation-No.35'(26-September-2013)-UN-Doc-CERD/C/GC/35para 46.

[4] UNCERD, 'General-Recommendation-No.34'(30-September-2011)-UN-Doc-CERD/C/GC/34para 2.

[5] International Crisis Group, *Myanmar: The Politics of Rakhine State*, (International Crisis Group-2014) i.

[6] UNHRC 'Report-of-the-SR-on-contemporary-forms-of-racism,racial-discrimination,xenophobia-and-related-intolerance'A/HRC/20/33para5.

[7] Ibid-5-6.

[8] World-Conference-against-Racism,Racial-Discrimination,Xenophobia-and-Related-Intolerance-para108.

[9] Ruteere(n 6)para11.

inequality and racial discrimination and that these reinforce each other".[10] Such link can be perceived in the case of the Roma people. The former-Special-Rapporteur-on-contemporary-forms-of-racism, Githu Muigai, noted that "structural discrimination experienced by Roma finds its origins in the past historical injustices perpetrated against them for centuries, which created structural inequalities that still persist and continue to have a disadvantageous or disproportionate effect on them".[11] On the other hand, in Indonesia, discrimination against people of Chinese-descent is fuelled by the economic discrepancy between the wealthy Chinese-Indonesian and the poor masses of the so-called *pribumi* ('native-Indonesian').[12] These examples once again highlight the importance of the adoption of a comprehensive measure that incorporates preventive measures in various fields. Thus, in their struggle to eliminate racial discrimination, states should not view the right of non-discrimination in isolation, and interrelate it with the fulfillment of political, economic, social, and cultural rights. In relation to this, states should establish more 'inclusive' economic, political, social, and cultural institutions for all members of society, including the most disenfranchised members of the community, without any unlawful distinction.[13]

In fact, the adoption of such a comprehensive and inclusive approach is mandated by the jurisprudence of international human rights law. Firstly, it is worth noting that one of the basic tenets of human rights is that it is indivisible, interdependent, and interrelated, as was mentioned in the Vienna-Declaration-and-Programme-of-Action.[14] This implies that each right must be seen in relation to other rights.[15] Secondly, the definition of 'racial discrimination' in Article-1(1)-of -ICERD is rather broad, as it includes "any distinction, exclusion, restriction, or preference (…) in the political, economic, social, cultural or any other field of public life".[16] As has been confirmed by CERD itself, "the definition of racial discrimination in article-1 expressly extends beyond measures which are explicitly discriminatory".[17] Thirdly, within the framework of ICCPR, Article-2(2) requires states "to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant".[18] As has been demonstrated, since marginalization (either social, political, economic, or cultural) and racism reinforce each other, it can be argued that the fulfillment of the political, economic, social, and cultural rights of a discriminated group constitutes a necessary measure to eliminate racial discrimination. In fact, as noted by Manfred Nowak in his commentary, "measures prescribed by Article-2(2) do not relate solely to repressive remedies against violations that have already taken place but rather include preventive measures and steps to ensure the necessary conditions for unimpeded enjoyment of rights ensured by the Covenant",[19] and this view is supported by the Human-Rights-Committee in its general comments.[20]

Therefore, while states are obliged to promulgate anti-discrimination laws and measures protecting groups from racism, they are bound by ICCPR to take a step further by ensuring the equal fulfillment of political, social, economic, and cultural rights for all members of society. In addition to this, Article-2(2) of ICERD establishes that "state parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms".[21] CERD has also recommended the enactment of multifarious positive measures relating to the fulfillment of political, economic, social, and cultural rights of disenfranchised groups,[22] such as measures to assure equal access to

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[10] Ruteere(n 6).

[11] UNHRC'Report-of-the-Special-Rapporteur-on-contemporary-forms-of-racism,racial-discrimination,xenophobia-and-related-intolerance,Githu Muigai'A/HRC/17/40para24.

[12] See Jemma Purdey, *Anti-Chinese Violence in Indonesia, 1996–1999*(University-of-Hawaii-Press-2006)-22.

[13] See Daron Acemoglu-and-James Robinson, *Why Nations Fail: The Origins of Power, Prosperity, and Poverty*-(Crown-Business-2012).

[14] Vienna-Declaration-and-Programme-of-Action-A/CONF.157/23para5.

[15] Theo-van-Boven,'Categories of Rights' in Daniel Moeckli-et-al. (eds), *International Human Rights Law* (OUP-2010)-173.

[16] ICERD,(entered-into-force-4-January-1969)-660-UNTS-195-(ICERD)-art-(1).

[17] *L.R. et al. v Slovakia* (2005) UN-Doc-CERD/C/66/D/31/2003, Communication No. 31/3003 para 10.4.

[18] ICCPR(adopted-16-December-1966,entered-into-force-23-March-1976)-999-UNTS-171(ICCPR)art2(2).

[19] Manfred Nowak,UN-Covenant-on-Civil-and-Political-Rights,CCPR-Commentary,at-60(2005).

[20] Ibid-1089-1092.

[21] ICERD-(n-16)-art2(2).

[22] See Wouter Vandenhole,*Non-Discrimination-and-Equality-in-the-View-of-the-UN-Human-Rights-Treaty-Bodies*-(Intersentia 2005) 196-199.

state institutions,[23] economic employment,[24] or educational institutions.[25] It has even ruled that criminalization of racial discrimination is not sufficient to ensure the fulfillment of the right of non-discrimination.[26]

In conclusion, in 1993 the Vienna-Declaration-and-Programme-of-Action declared all human rights to be "indivisible, interdependent, and interrelated" calling on the international community to treat human rights in a fair and equal manner, on the same footing, and with the same emphasis. In the fight against racism and racial discrimination, states should interlink the application of the articles on equality and non-discrimination in conjunction with the implementation of political, economic, social, and cultural rights. Such a comprehensive approach is needed in order to break the unholy cycle between marginalization and racism. In fact, the adoption of this approach is mandated by international human rights law. ICCPR requires states to take the necessary steps to ensure the enjoyment of all rights in the convention, while ICERD explicitly obliges states to include social, economic, cultural, or other measures in the fight against racism when the circumstances so warrant. In order to achieve this, states should establish inclusive policies for disenfranchised groups and transformative institutional models open to all members of society without any unlawful distinction. While the fight to eradicate racism is not without odds, states must take these steps in order to progressively remove the most potent fuels for unfounded and misapprehended racial hatred and prejudices that have become leading causes of systematic racial discrimination and violence.

Ignatius Yordan Nugraha
EAFORD

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[23] UNCERD,'Concluding-observations -of –the-Committee-on-the-Elimination-of-Racial-Discrimination-(Kazakhstan)'UN-Doc-CERD/C/65/CO/3para13.

[24] UNCERD,'Concluding-observations-of-the-Committee-on-the-Elimination-of-Racial-Discrimination-(Norway)'-UN-Doc-CERD/C/304/Add.40para23.

[25] UNCERD,'Concluding-observations-of-the-Committee-on-the-Elimination-of-Racial-Discrimination-(Poland)'-UN-Doc-CERD/C/62/CO/6para13.

[26] *LK-v-the-Netherlands*-(1991)-UN-Doc-CERD/C/42/D/4/1991,Communication-No.4/1991,para6.4.

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The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 January 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Please recycle

The Refugee Crisis in Europe: De Facto Discrimination against Refugees and Migrants in European Union Countries

Thousands of refugees undertake a perilous journey of thousands of miles from the Syrian Arab Republic, Iraq, Afghanistan, Eritrea, or Somalia, to European Union (EU) countries such as France, Germany, Sweden and the United Kingdom. On this arduous and hazardous trek, they are constantly risking their life, facing the danger of death itself in order to escape poverty, catastrophe, and destruction in their country of origin. When they have arrived in the EU after overcoming the overwhelming odds, it might seem to them that they are finally safe from the chaos they escaped. However, upon arrival, they are prone to various difficulties, such as unemployment, the lack of health services, education, housing, provisions, language barriers, harassment, social exclusion, and victimization. They might also face a problem that has plagued Europe for years: the problem of discrimination against migrants and refugees as a result of prejudice and stereotypes.

Migrants and refugees experience multi-manifestations of *de facto* discrimination. As highlighted in the Durban-Declaration-and-Programme-of-Action (DDPA), "we recognize that xenophobia against non-nationals, particularly migrants, refugees and asylum-seekers, constitutes one of the main sources of contemporary racism. Human rights violations against members of such groups occur widely in the context of discriminatory, xenophobic and racist practices."[1] In light of the recent refugee crisis and European refugee quota scheme, EU states are called to fulfill their obligation under international human rights law to respect, protect, and fulfill the right of equality and non-discrimination to all members of society, including refugees. They should not only ensure that there is no *de jure* discrimination, but also undertake positive measures to eliminate *de facto* discrimination.

One of the major problems in relation to discrimination against migrants and refugees is hate speech. For instance, in the Netherlands, the right-wing politician Geert Wilders characterized the recent refugee crisis as an "Islamic invasion", and claimed that there are "masses of young men in their twenties with beards singing *Allahu Akbar* across Europe. It's an invasion that threatens our prosperity, our security, our culture and identity."[2] While this claim is misapprehended since some of these refugees are also of Christian origin, this sort of statement demonstrates the discriminative attitude of some segments of society against refugees from the Middle East; the Slovakian Prime-Minister even stated that it would only accept Christian refugees from Syrian Arab Republic.[3]

Aside from this prejudice, the Special Rapporteur on the human rights of migrants, François Crépeau, also observed that immigrants are often portrayed as being 'illegal', 'job stealers', and 'a

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[1] World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance para 16.

[2] Yoruk Bahceli, 'Wilders Tells Dutch Parliament Refugee Crisis is 'Islamic invasion'' (*Reuters*, 10 September 2015) <http://www.reuters.com/article/2015/09/10/us-europe-migrants-netherlands-idUSKCN0RA0WY20150910> accessed 22 September 2015.

[3] Rick Lyman, 'Eastern Bloc's Resistance to Refugees Highlights Europe's Cultural and Political Divisions' (*New York Times*, 12 September 2015) <www.nytimes.com/2015/09/13/world/europe/eastern-europe-migrant-refugee-crisis.html> accessed 22 September 2015.

burden'.[4] Particularly with regards to the first view, he found that "the conceptualization of irregular migrants as 'illegal' (...) had an impact on the general public's perception of migrants, legitimizing policies that are not in line with human rights guarantees and contributing to xenophobia and discrimination".[5] Meanwhile, although the claim of immigrants as 'job stealers' and 'a burden' had been debunked in the Special Rapporteur's report,[6] they are still often invoked as an excuse to justify racism.

Migrants also face discrimination in the economic sector. As pointed out, "migrants report discrimination by their employers, on many grounds such as nationality, race and sex, with regard to, inter alia, remuneration, excessive overtime, opportunities for promotion, access to health care and unfair dismissals. (...) Migrants, both regular and irregular are often employed under precarious and discriminatory conditions, with temporary contracts that do not entitle them to access social security services. They sometimes suffer verbal, physical and sexual abuse in the workplace".[7] A study by Rafaela Dancygier and David Laitin also found that "migrants who do manage to settle in host countries often face barriers when trying to advance economically. In many receiving states, first and second generation immigrants have higher unemployment rates and earn lower wages than do natives".[8] A joint publication by the International Labor Organization (ILO), the International Organization for Migration (IOM), and the Office of High Commissioner of Human Rights (OHCHR) further demonstrates that "comparative data on unemployment figures measuring different rates between national and employment-authorized non-national members of the work force may provide telling indications of discrimination in employment."[9]

These reports demonstrate the problem of *de facto* discrimination refugees might face when settling in EU countries. EU states are reminded of their ratification of the International-Convention-on-Civil-and-Political-Rights (ICCPR), the International-Convention-on-Economic-Social-and-Cultural Rights (ICESCR), and the International-Convention-on-the-Elimination-of All-Forms-of-Racial-Discrimination (ICERD). Of particular importance are Article-2(1) and 26 of the ICCPR, Article-2(2) of the ICESCR, and Article-2 of the ICERD. Specifically with regards to the issue of *de facto* discrimination that migrants face in the economic sector, Article-2(2) of the ICESCR requires states to guarantee that the economic, social, and cultural rights enshrined in the ICESCR are exercised "without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."[10] Article-5 of the ICERD even explicitly requires states to prohibit and eliminate racial discrimination in the exercise of economic, social, and cultural rights, including the right to work.

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[4] UNHRC 'Report of the Special Rapporteur on the human rights of migrants, François Crépeau: Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants' A/HRC/29/36 para 71-74.

[5] ibid.

[6] ibid.

[7] UNHRC 'Report of the Special Rapporteur on the human rights of migrants, François Crépeau: Labour exploitation of migrants' A/HRC/26/35, para 33.

[8] Rafaela M. Dancygier and David D. Laitin, 'Immigration into Europe: Economic Discrimination, Violence, and Public Policy' [2014] 17 Annual Review of Political Science 43, 44.

[9] International Labor Organization, International Organization for Migration, Office of High Commissioner of Human Rights, *International Migration, Racism, Discrimination and Xenophobia* (2001) 14.

[10] International Covenant on Economic, Social and Cultural Rights, (entered into force 3 January 1976) 993 UNTS. 3 (ICESCR) art 2(2).

The Committee-on-Economic-Social-and-Cultural Rights (CESCR) recommended that states should "strengthen measures to overcome the obstacles faced by persons of immigrant background, in particular women, in accessing the labor market".[11] Meanwhile, on the issue of the presence of hate speech against refugees, Article-4 of the ICERD obliges states to "condemn all propaganda and all organizations (...) which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal-Declaration-of-Human-Rights (UDHR) and the rights expressly set forth in article-5 of this Convention".[12] The CESCR has further recommended state parties "to intensify efforts to create a culture of tolerance and to eliminate all forms of discrimination, in so far as they affect women, Roma, asylum seekers and immigrants."[13]

Thus, under international human rights law, states are obligated to undertake both positive and negative measures to ensure the right of non-discrimination of refugees.[14] Moreover, EU states are called to ratify the International-Convention-on-the-Protection-of-the-Rights-of-All-Migrant-Workers-and-Members-of-Their-Families. It is regrettable that these states, who have confirmed "their attachment to (...) respect for human rights and fundamental freedoms",[15] have failed to undertake this step. This convention would have provided further protection for refugees and their families.

In conclusion, founded on the values of human rights and the rule of law,[16] it is the duty of EU Member States to adhere by their obligations, as mandated by the ICCPR, ICESCR, and ICERD. They should also ratify the UN Migrants Convention to provide more protection for refugees. In the end, as was famously affirmed by the UDHR, "all human beings are born free and equal in dignity and rights."[17] Thus, EU states should ensure that those who have faced unimaginable catastrophes in their homeland will not be treated as second-class citizens during their residency, as discrimination will be another ordeal for them whose dignity and rights have been severely violated. This refugee crisis raises issues that might be construed as a test case of EU's commitment to respecting refugees' rights and nations' obligations under international law.

Ignatius Yordan Nugraha
EAFORD

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[11] Committee on Economic, Social and Cultural Rights, 'Concluding observations of the Committee on Economic, Social and Cultural Rights (Norway)' UN Doc. E/C.12/1/Add.109 para 28.

[12] International Convention on the Elimination of All Forms of Racial Discrimination, entered into force 4 January 1969) 660 UNTS 195 (ICERD) art 5.

[13] UNHRC 'Concluding observations of the Committee on Economic, Social and Cultural Rights (Portugal)' UN Doc. E/C.12/1/Add.53 para 18.

[14] See Wouter Vandenhole, *Non-Discrimination and Equality in the View of the UN Human Rights Treaty Bodies* (Intersentia 2005) 187-240.

[15] See Consolidated Version of the Treaty on European Union [2008] OJ C115/13 art 2.

[16] ibid.

[17] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 1.

United Nations A/HRC/31/NGO/5

General Assembly

Distr.: General
16 February 2016

English only

Human Rights Council
Thirty-first session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Organization for Defending Victims of Violence, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[19 January 2016]

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GE.16-02162(E)

Please recycle

Middle East Children: Victims of Endless Armed Conflicts

The fact that Iraq ranked the least happy country in the world is of no surprise. According to the available statistics, within the past 13 years (from 2003 to 2016), the civilian's death toll in Iraq amounts to over 171000 lost lives, many of whom are women and children.

An increasing number of children are victims of the ongoing armed conflicts in Iraq and the whole Middle East: children in Iraq, the Occupied Palestinian Territory, the Syrian Arab Republic, and Yemen are facing breaches of their human rights including the right to life, the right to health, the right to education, the right to food, the right to clean water and the right to adequate housing.

Armed conflicts have various adverse effects on children. Children are killed, maimed, abducted, raped, displaced or are made to serve as child soldiers during the conflicts.

Children lose their life or physical health in armed conflicts. For example, Iraq child casualties, that is the number of children killed or maimed by ISIS atrocities, are estimated to be over 3000 . A recent case is another mass grave discovered, in Iraq, containing bodies of Yazidis, including children, who refused to join the Islamic State .

In war zones, some children are abducted by armed groups and are subjected to abusive behavior. For example in Iraq and Syria, ISIS has abducted over one thousand girls and boys. In one incident in Syria, ISIS abducted approximately 150 young boys on their way home from school in Aleppo. They were released after a few months, but while in captivity, they were physically abused, indoctrinated and made to observe violent practices . In addition, in Iraq, Yezidi girls have been victims of sexual slavery which is quite justified by ISIS interpretation of religious texts. Also, in mid-January 2016, ISIS abducted about 400 Yazidi children who were reportedly being trained as potential suicide bombers .

Another negative effect of war on children is their abuse as child soldiers which leads to both physical disability and serious psychological traumas if they survive the conflict. Child soldiers are seriously injured or permanently disabled in wars. Moreover, those who are forced to kill other people or witness violent scenes will suffer from the adverse life-long effects of their bitter experiences.

Millions of children are reported to be victims of forced displacement as a result of the Middle East conflicts. Displaced children usually suffer from various deprivations, including loss of their home, family, friends and losing the chance of going to school.

As innocent children in war zones, especially Iraq and Syria are still paying the price of war, Organization for Defending Victims of Violence (ODVV) would like to offer the following recommendations to the Human Rights Council, hoping to alleviate the children's endless sufferings:

- In the wake of the atrocities committed by the extremist groups toward children in Syria and Iraq, ODVV calls on the Human Rights Council to pronounce itself once more on

this challenge. In our globalized world, where threats recognize no border, this challenge could only be thwarted through joint efforts by the entire international community.

- Reports indicate that millions of Iraqi and Syrian refugee children are deprived of education . Since the shocking number of children deprived of schooling because of Middle East and Africa conflict is estimated to be over 13 million , ODVV urges the member states to assist the Human Rights Council bodies such as UNICEF and UNHCR in order to save the children's shattered future.

- Considering the fact that refugee crises is one of the most important challenges the world is facing today, ODVV calls on all member states to stop blaming refugees and migrants for economic and social problems, and instead combat all kinds of xenophobia and racial discrimination in order to prevent future tensions and violence.

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Is the United Attempt to Eliminate ISIS Threat Successful?

Seems as if the unanimous attempt to vanish ISIS has not been successful enough and the terrorist group continues to pose a threat not only to the Middle East but the Europe and other parts of the world. As the recruitment of new members to the terror group continues, the attacks carried out by them appear to be countless.

Despite the calls for shutting down the ISIS propaganda machine, recruitment of forces are maintained and people from different walks of life including fighters and doctors are joining the terror group. ISIS recruiters have been successful to radicalize students and civilians who are fascinated with violence, convincing them to unite with the extremists.

The sickening ISIS video of beheading 5 hostages, which shows ISIS new font man along with a very young boy who has joined ISIS shocked the world. The child grandparents are desperately begging the authorities to bring the young child back home.

There are attempts to stop young doctors from travelling to the Syrian Arab Republic. A British delegation, including an imam from London, have visited Sudan to try to dissuade young British doctors from joining (ISIS). At least 17 British doctors travelled from there to the Syrian Arab Republic during 2015 to staff ISIS's hospitals.

Following the Paris attacks, security analysts are coming to the conclusion that that SIS appears to have the intention and capability to hit European targets in professionally planned attacks. According to them, terror threats will be the new normal for Europe.

In Munich, Germany, Police evacuated two major railway stations on New Year's Eve, because they had received a tipoff from foreign intelligence agencies that a group affiliated to ISIS was intending to attack the stations .

Turkish police detain two suspected suicide bombers who were believed to be plotting to carry out Paris style attack in the capital city's heart during the New Year celebrations .

In Brussels, following the arrest of two suspects by the Federal Prosecutor's Office, the Mayor, Yvane Mayeur canceled the New Year celebrations over what authorities called a "serious threat" of holiday season attack.

Britain is announced to be more of a target for ISIS attacks since David Cameron decided to bomb ISIS positions in the Syrian Arab Republic. The new ISIS front man, who replaced Jihadi John (Mohammad Emvasi) following his being killed in a drone strike appears in the above mentioned sickening video showing the beheadings of five hostages.

Today, ISIS is active in 11 countries in the Middle East, Africa and Asia. In Iraq, in spite of losing much of Ramadi , it still controls Fallujah and Mosul, and has lost little territory in the Syrian Arab Republic. And it has spread even more fear throughout Europe.

It seems as if the world leaders have failed to find workable solutions to one of the most pressing issues of our time, the horrific violence against civilians.

The military solutions have not proved to be successful enough to eliminate ISIS threat.

As a NGO aiming to defend victims of violence, our organization wishes to make few recommendations to the Human Rights Council in order to help re-establishing stability in the Middle east:

We would like to urge the council to support awareness raising projects in the areas where ISIS tries to mobilize young adults, giving the potential recruits enough information about the reality of ISIS Ideology that NO religion advocates.

It is necessary to cut off ISIS funding. For example, countries must be dissuade form getting involved in business with ISIS, buying its oil and providing the terror group with enough financial resources to survive.

We would also like to call on the Human Rights council to persuade Iraq government to create a polity that recognizes Sunni, Shia, Kurdish, Alawite, and Christian interests at the same time.

In our opinion, it would also be helpful if a HRC supported study can interview ISIS defectors, encouraging them to tell their stories, and then publicize the information, so as to help the potential recruits understand that ISIS is not creating an Islamist utopia in the areas it controls, but a hell on earth; it is not protecting Muslims but killing them with brutality.